



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 15-04695
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

02/03/2017

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied. Applicant did not present sufficient information to mitigate financial security concerns.

Statement of the Case

On October 2, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. DOD issued to Applicant a Statement of Reasons (SOR), dated December 6, 2015, detailing security concerns for financial considerations under Guideline F. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on December 18, 2015. He denied two allegations (SOR 1.a and 1.b) stating that the debts had been paid. He admitted twelve allegations and was unsure of the status of the remaining six allegations. Department Counsel was prepared to proceed on March 16, 2016, and I was assigned the case on September 7, 2016. DOD issued a notice of hearing on October 13, 2016, and a hearing was scheduled for October 27, 2016. I convened the hearing as scheduled. The Government offered six exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1-6. Applicant testified and submitted four exhibits that I marked and admitted into the record without objection as Applicant Exhibits (AX) A-D. I kept the record open for Applicant to submit additional documents. Applicant timely submitted three documents that I marked and admitted into the record without objection as AX E, AX F, and AX G. AX E and AX G each consist of one page. AX F consists of three pages. (GX 7 and 8, e-mail, dated November 28, 2016) DOHA received the transcript of the hearing (Tr.) on November 3, 2016.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact. Applicant is 47 years old. He served seven years on active duty in the Navy from January 1990 to January 1997. He received an honorable discharge as a second-class petty officer (E-5). He was granted eligibility for access to classified information while serving on active duty. He has been a senior or lead systems engineer for defense contractors since 1997. He first married in September 1995 and divorced in November 1996. He married again in October 2004 and divorced in August 2014. He married again in September 2014. He has two children and pays \$896 monthly in child support taken directly from his pay. Applicant and his wife have a family monthly income of approximately \$3,400, and monthly expenses of approximately \$3,127, leaving a monthly remainder of \$273. (Tr. 18-28, 43-47; GX 1, e-QIP, dated October 2, 2014; AX C, Financial Information at 1)

The SOR alleges and credit reports (GX 3, dated August 25, 2014; GX 4, dated November 11, 2014; and GX 5, dated March 15, 2016), and an incident report from his employer (GX 6, Incident Report, dated February 12, 2016) confirm Applicant's delinquent debts. There are two judgments for late payment of apartment rent for the same apartment for \$1,101 (SOR 1.a) and \$1,040 (SOR 1.b). There are also a judgment for a car repair bill of \$1,810 (SOR 1.c); judgments on loans from different financial companies for \$2,278 (SOR 1.d), \$1,911 (SOR 1.e), and \$1,995 (SOR 1.f); and judgments for medical debts of \$389 (SOR 1.g), \$290 (SOR 1.h), \$713 (SOR 1.i), and \$190 (SOR 1.j). The credit reports also list a debt for Applicant's state in collection for \$3,323 (SOR 1.k); a charged-off debt for \$2,370 (SOR 1.l); a charged-off credit card debt for \$432 (SOR 1.m); an account more than 120 days past due for \$2,043 (SOR 1.n); a debt to a bank more than 120 days past due for \$850 (SOR 1.o); a debt in collection for \$9,531 (SOR 1.p); a credit card debt in collection for \$1,514 (SOR 1.q); a medical debt in collection for \$534 (SOR 1.r); a television service debt in collection for \$215 (SOR 1.s); and a child support account in arrears for \$3,474 (SOR 1.t). The total amount of the delinquent debt is approximately \$36,000.

Applicant attributes the start of his financial issues to his poor money management by not paying his bills on time. He then incurred expenses when he divorced in August 2014. Applicant and his ex-wife separated in January 2014 but both stayed in their house. Applicant paid the mortgage and living expenses. However, it was determined that he was in child support arrears of approximately \$3,474 from the time he and his ex-wife separated in January 2014 until the child support adjudication in August 2014. Applicant experienced reductions in income when his employers lost contracts. His yearly pay was reduced by approximately \$9,000 in 2012, and then \$15,000 in July 2016. Applicant's present wife had surgery in January 2016. She was unemployed from January to October 2016 and did not contribute to the family income. As noted above, she is now employed and contributing to the family income. (Tr. 22-28, 47-48)

Applicant claims to be paying a credit service company \$321 monthly since April 2016 to assist him in resolving some of his remaining debts. They are to resolve five SOR debts. (SOR 1.e, 1.j, 1.l, 1.n, and 1.p) The company is also resolving four non-SOR debts. (AX C, Client Worksheet) Applicant initially expected to resolve the debts in three to five years. Applicant presented an unexecuted service agreement with the financial service company (AX C, Client's Worksheet). Applicant did not present any information to verify that he has and is paying the fees associated with the account. Applicant also claims that based on his present financial situation he requested the company to reduce his monthly payment. He has not received a reply to his request. If the company reduces his monthly payments, he will not resolve these debts for a few more years. Other than his testimony and unexecuted documents, Applicant did not presented adequate documentation to establish his arrangements with the credit servicing company. (Tr. 27-30, 33-35)

Applicant has engaged the services of a credit monitoring law firm to identify and verify some of his delinquent debts. The credit law firm advised Applicant that they have initiated action to verify some of his debts. Two of the debts (SOR 1.d and 1.o) are listed on the SOR. (Tr. 28-30; AX D, e-Mail, dated October 24, 2016)

Applicant claims that the judgments for late rent payments (SOR 1.a and 1.b) were satisfied and that he is current with his rent. Applicant provided documents that the judgments at SOR 1.a and 1.b were paid through garnishment. Department Counsel agreed the judgments were satisfied. (Tr. 12-19; AX A, Lien Adjustment, dated April 26, 2016)

The judgment at SOR 1.c to an auto repair shop was initially being paid by garnishment. Applicant claims that he now makes payments directly to the creditor, and that he has only two payment remaining to satisfy the debt. He did not present any documents at the hearing or post-hearing to verify his claim that he made payments directly to the auto repair shop. This debt is not resolved. (Tr. 29-31)

Applicant contacted the creditor for the judgment at SOR 1.d to arrange a payment plan. The debt at SOR 1.o is part of the overall debt at SOR 1.d. Applicant agrees that he owes a debt but is not sure of the amount of the debt. He offered to pay

\$100 a month on the debt but the plan was rejected. Applicant asked the credit monitoring law firm to negotiate a payment plan. There is no agreed plan to pay the judgment. This debt is not resolved. (Tr. 31-33)

Applicant claims that the debt at SOR 1.f was paid by garnishment during the time he was employed by a former employer. He is unable to obtain information from his former employer to verify that he paid the garnishment. He did not provide any documents from the creditor that the debt is resolved. There is insufficient documentation to establish that the debt is resolved. (Tr. 34)

Applicant admits that the judgments at SOR 1.g and 1.i are not paid or resolved, and that he has not contacted the creditors concerning the judgments. Applicant contacted the creditor for the judgment at SOR 1.h, but the creditor had no information concerning the debt and could not verify that Applicant owed the debt. This judgment at SOR 1.h is resolved for Applicant. (Tr. 35-36)

The debts at SOR 1.k and 1.t are the same debts for child support arrears. Applicant provided sufficient documents from the state that the arrears have been resolved through garnishment. Applicant is current with his monthly child support payments of \$896, which are deducted directly from his salary. (Tr. 16-19. AX B, Letter, dated January 28, 2016)

Applicant indicated that the credit card debt at SOR 1.m was paid. However, he provided no documents to verify his claim. Applicant has not contacted the creditor for the debt at SOR 1.q to reach a settlement agreement. The credit monitoring law firm is working to verify the debt at SOR 1.r. SOR debts 1.m, 1.q, and 1.r have not been resolved. (Tr. 37-38; AX C)

Applicant claims to have paid the debt at SOR 1.s. He received a settlement proposal from the creditor to settle the debt for \$150.54. He claims to have provided a post-dated check to pay the debt. However, he did not provide sufficient documentation to establish that he made the settlement payment as he claims. (AX E, Letter, dated November 10, 2016; AX F Spreadsheet, undated)

One of Applicant's former employers provided a letter of recommendation. She has known Applicant for over 12 years. Applicant worked for her on numerous projects. He was reliable and trustworthy with an excellent work ethic. He worked hard and had excellent abilities. Applicant is a person of good moral character respected by his superiors and peers. (AX G, Letter, dated November 7, 2016)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about a person's reliability, trustworthiness, and ability to protect classified information. (AG ¶ 18) The financial security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual's responsibility, trustworthiness, and good judgment. Security clearance adjudications are an evaluation of an individual's reliability and trustworthiness. A financially irresponsible person may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or

irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Applicant started experiencing financial problems because of his poor money management and not paying his debts on time. He then incurred debt because of his divorce and the requirement to pay child support. Applicant's financial history and delinquent debts are sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations). The evidence indicates both an inability and an unwillingness to satisfy debt.

I considered the following Financial Considerations Mitigating Conditions under AG ¶ 20:

- (a) the behavior happens so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, untrustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indication that the problem is being resolved or is under control; and
- (d) the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

These mitigating conditions do not apply. Applicant's debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely. Applicant's financial problems started by his poor money management exacerbated by divorce, child support, unemployment of his wife, and pay reductions. These circumstances could happen in the future. While the divorce and pay reductions were conditions beyond his control, the underlying reason for his delinquent debt was his poor money management in not paying his debts on time. These events did not occur under unusual circumstance and were not largely beyond his control. Applicant did not provide information that he has or is receiving financial counseling.

For a good-faith effort under AG ¶ 20(d), there must be an ability to repay the debts, the desire to repay, and evidence of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. Applicant must show a systematic method of handling debts, and establish a meaningful track record of debt payment. A track record of debt payment

can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts is not a substitute for paying debts in a timely manner and acting in a financially responsible manner. Applicant must establish that he has a reasonable plan to resolve financial problems and has taken significant action to implement that plan.

Applicant did not establish that he has a reasonable plan to resolve his financial problems. Applicant claims to have a working relationship with a credit-servicing company to assist him in resolving his debts. The information Applicant presented was his own testimony and unexecuted documents. Applicant's testimony on his plans is not credible. He presented no independent reasonable evidence that he has an established ongoing plan to resolve his financial issues.

Applicant has not established that he has a track record of debt payment. Applicant paid some of his delinquent debts through the involuntary actions of garnishment or funds taken directly from his salary. He has not shown that he paid any of his debts through his own payment actions. The payment of debt solely through judgments and garnishment does not establish good faith. Applicant has not shown that he is managing his personal financial obligations by reasonable and responsible financial actions, and that his financial problems are behind him. Applicant has not presented evidence of responsible behavior, good judgment, and reliability. Based on all of the financial information, I conclude that Applicant has not mitigated security concerns based on financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's five years of

active Navy service and his over 10 years as a senior network engineer. Applicant incurred delinquent debt from poor money management and expenses incurred by divorce and requirement to pay child support. Applicant presented insufficient information to establish that he took personal reasonable and responsible actions to pay his delinquent debts. The debts paid were through involuntary garnishment actions and not personal affirmative planned actions by Applicant. There is not clear evidence that Applicant can and will responsibly manage his financial obligations. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has not mitigated security concerns arising under the financial considerations guideline. Eligibility for access to classified information is denied.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINSTAPPLICANT
Subparagraphs 1.a – 1.b	For Applicant
Subparagraphs 1.c – 1.g	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i – 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l – 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant (duplicate debt)
Subparagraph 1.p – 1.s:	Against Applicant
Subparagraph 1.t:	For Applicant (duplicate debt)

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge